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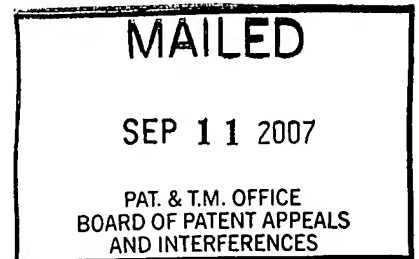3   UNITED STATES PATENT AND TRADEMARK OFFICE
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6   BEFORE THE BOARD OF PATENT APPEALS
7   AND INTERFERENCES
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10   Ex parte TAKANORI NISHIMURA, KEIGO IHARA, TAKAO
11   YOSHIMINE, JUNKO FUKUDA, and TAKAHIKO SUEYOSHI
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14   Appeal 2007-1569
15   Application 10/089,083
16   Technology Center 2100

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19   Oral Hearing Held: August 7, 2007
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23   Before ALLEN R. MacDONALD, JAY P. LUCAS, and
24   JOHN A. JEFFERY, Administrative Patent Judges
25
26   ON BEHALF OF THE APPELLANTS:
27
28   ANDREW T. HARRY, ESQ.
29   OBLON, SPIVAK, McCLELLAND,
30   MAIER & NEUSTADT, P.C.
31   1940 Duke Street
32   Alexandria, VA 22314
33

1   The above-entitled matter came on for hearing on Tuesday, August 7,

2   2007, commencing at 09:00 a.m., at the U.S. Patent and Trademark Office,

3   600 Dulany Street, 9th Floor, Alexandria, Virginia, before Jan Jablonsky,

4   Notary Public.

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6   MR. HARRY: First of all, thank you for your time. The primary

7   issue in this case surrounds or centered on the distinction between a

8   client-based content push distribution system, which is ultimately what our

9   claims are directed to. And it is directed to actually sending content from a

10   user terminal to a distribution server and then broadcasting by that

11   distribution server the content that was received from the user terminal

12   apparatus.

13   So, there are a lot of other steps in claim 1, but the primary aspect of

14   claim 1, I think, that is at issue is this content that is actually sent from the

15   client device to the content distribution server and out to the clients.

16   And the primary reference that is relied upon to address that feature is

17   Nakamura. So, I am going to focus on Nakamura with respect to the

18   features for which it is asserted in this case. And Nakamura is a different

19   system from what our claimed system is because it is more of a -- the

20   content-based retrieval system.

21   So, think about a cable on demand system, maybe, where a server or a

22   client, indicated by reference numeral 101 in Nakamura, might be a cable

23   box and a client user base, which is the cable itself, or the cable interface

24   itself, actually goes out to a server, requests specific content from that

25   server, and then the server responds by setting up the distribution of that

1   content, or would be a video upon demand, which is then sent back to the

2   user.

3   So, the fundamental difference between the two systems is that our

4   client or user terminal actually sends the streaming data out to the

5   distribution server, which then broadcasts it to a plurality of terminals, as

6   opposed to Nakamura, in which the client device actually requests the

7   download or the viewing of a specific piece of content from the server itself.

8   So, with that in mind, I am going to get into a more detailed

9   description of the claim language itself. As I mentioned previously, the

10 claims are directed to using or creating a streaming server system. And in

11 that respect, the purpose or the advantages behind the claimed invention are

12 directed to using alternative resources to set up this actual streaming service.

13   So, we've got a reservation control center in the first network, which is

14 labeled as, or which is referred to as the internet now with reference numeral

15 103. And we use those resources to reserve access to a distribution

16 content -- or a distribution server, in order to send data from our client

17 device, which is our user terminal, which is user PC reference numeral 106,

18 via a different network.

19   So, by setting up this reservation through the internet using a different

20 apparatus, that different apparatus being the reservation control center, it

21 frees up the resources of the distribution server so that it is only dedicated

22 actually to distribute content that it receives from various client devices.

23   This use of separate networks saves resources, obviously, for the

24 distributing server because you don't have a bunch of different clients

25 gaining access to the distributing server in order to get content.

1   So, claim 1 -- in claim 1 I am kind of going to step through the steps

2   only for which Nakamura is applied because it is going to launch us into the

3   meat of this argument and of the subject at hand.

4   So, independent claim 1 recites a method of reserving and accessing

5   resources in a distribution server. That is streaming server 102 if you look at

6   Figure 1.

7   It includes a requesting step of sending request information, including

8   desired service time and some other information to use the content

9   distribution from the user terminal apparatus, which is the user PC 106, to a

10   reservation control apparatus, which is reservation control center 101, the

11   first network. And that is via the internet, corresponds to reference 103 in

12   our Figure 1 --

13   JUDGE JEFFERY: Excuse me, counsel. Just one question here.

14   MR. HARRY: Sure.

15   JUDGE JEFFERY: The Nakamura reference is basically using a

16   single network to transmit the content.

17   MR. HARRY: Right.

18   JUDGE JEFFERY: And the invention is calling for two networks?

19   MR. HARRY: Correct.

20   JUDGE JEFFERY: Okay.

21   MR. HARRY: That is one of the issues at hand. I think with respect

22   to what we've got on the record in that aspect, I think that says a lot of what I

23   want to say, first of all.

24   But it is -- one of the more important, I guess, aspects of our invention

25   is the fact that you are reserving these resources by using these networks, by

26   which the first reserves the resources, and then actually, you know, use an

1 authenticated network to send the streaming video, to save bandwidth, so it

2 can be sent out to the clients.

3   JUDGE LUCAS: But -- excuse me. Mr. Harry, right?

4   MR. HARRY: Right.

5   JUDGE LUCAS: You mentioned that Nakamura has a single

6 network. Is that one of your points?

7   MR. HARRY: That is one of the points in the appeal brief. It is

8 probably a more ancillary points of the ones that I am going to discuss here

9 with regard to the distribution of the data.

10   JUDGE LUCAS: Okay.

11   MR. HARRY: But Nakamura has got the network 103, I believe, that

12 performs the transmission between the client and the server 120.

13   So, the client is 101, the server is 120. The network in between the

14 two --

15   JUDGE LUCAS: Right. The network 130 -- you don't have

16 Nakamura in front of you, do you?

17   MR. HARRY: I can get it.

18   (Pause.)

19   MR. HARRY: Okay. Got it.

20   JUDGE LUCAS: Thank you. Dyslexia aside, I think you meant 130.

21   MR. HARRY: Correct.

22   JUDGE LUCAS: That's right.

23   MR. HARRY: Sorry.

24   JUDGE LUCAS: That's okay. I was reading through the Nakamura

25 reference, and there is a very curious paragraph in column 1, about line 36 or

26 37.

1   (Pause.)

2   MR. HARRY: Okay.

3   JUDGE LUCAS: It was curious because you didn't -- I noticed your

4 name was on the brief. And it's a nicely written brief.

5   And you didn't seem to address the point of this paragraph. It says,

6 "Network 130 comprises a heavy circuit for transmitting data streams from

7 server 120 to each client and a thin line for transmitting control information

8 from each client to server 120."

9   So, doesn't it appear to you that network 130 actually has a thick and a

10 thin, meaning that a high capacity and a small capacity line in it?

11   MR. HARRY: I think the issue is more directed to the information

12 that is actually transmitted over those networks. As I said, I think the more

13 nuts and bolts of the arguments are what is actually sent from the client to

14 the server and from the server to the client.

15   There --

16   JUDGE LUCAS: Okay. Perhaps -- I interrupted you and I apologize

17 for that.

18   MR. HARRY: No problem.

19   JUDGE LUCAS: Continue on your flow.

20   MR. HARRY: Okay.

21   JUDGE LUCAS: And then, when you get to this point, you might

22 want to address it.

23   MR. HARRY: Okay.

24   JUDGE LUCAS: Okay?

1   MR. HARRY: Thank you. Okay. So, continuing on with the claims.

2   There is a storing step of writing and storing the authentication information,

3   including the reservation information in the actual user terminal apparatus.

4   And to address those features, the Examiner's answer, at least citing

5   specific portions of Nakamura, column 1, lines 43 through 45, and lines 55

6   through 62, which describes how the client requests information from the

7   content server and that the -- the client itself, reference numeral 101, is able

8   to obtain reproduction schedule in response to that request to the server.

9   So, from this citation and the language used in the Examiner's answer,

10   it is clear that the Examiner considers that the client in Nakamura's system,

11   reference numeral 101, corresponds to our user terminal apparatus and that

12   the server in Nakamura 120 corresponds to our distribution server.

13   The only problem with that is that the client device of Nakamura does

14   not transmit content to the server which is then broadcast. Instead, it only

15   transmits a request to receive content from the server itself.

16   And that's the main distinction from the last two portions of our

17   claim -- the last two features of our claim that recite, "The features of

18   transmitting content from the user terminal apparatus or the user PC to the

19   distribution server via second network and broadcasting by the content

20   distribution server, said content data received from said user terminal

21   apparatus over the first network."

22   So, regardless over which networks they are transmitted, you've got

23   this concept of receiving from the user terminal apparatus at the content

24   distribution server, specific content, and rebroadcasting that content.

25   So, at least with respect to the way in which the Examiner's answer

26   rejects the reservation requesting step and the storing step, the Examiner

1   seems to consider that the client in Nakamura is the user terminal apparatus.

2   The client in Nakamura never transmits content data that is then rebroadcast

3   via the content distribution terminal.

4   And in specifically addressing these features, in the Examiner's

5   answer, at least with respect to transmission of the data stream from the

6   client to the server, the Examiner's answer states that, "The Examiner also

7   considers data stream transmitted from server interface unit and carried out

8   by client as transmitting client from the user terminal apparatus to the

9   distribution server."

10   JUDGE LUCAS: I'm sorry, where?

11   MR. HARRY: That is at -- that was at page 22 of the Examiner's

12   answer.

13   And then the Examiner further asserts that, "The Examiner considers

14   data transmitted from client 101 to server 120 as transmitting content from

15   the user terminal apparatus to the distribution server."

16   So, I am not sure -- those are kind of contradictory thoughts. I am not

17   sure -- it looks like the Examiner almost appears to assert that the server

18   itself has become the client distribution terminal -- or the client itself. But

19   then the Examiner states that he considers data transmitted from the client to

20   the server as transmitting content from the user terminal apparatus to the

21   distribution server.

22   But as I said previously, none of the data transmitted from the client is

23   actually redistributed or rebroadcast or broadcast at all by the content

24   distribution server itself. So --

25   JUDGE LUCAS: What is the nature of that data?

26   MR. HARRY: The data -- our data or their data?

1   JUDGE LUCAS: The data that you were just referring to, that you

2   consider non-analogous.

3   MR. HARRY: Their data is requests for content. So, the

4   content -- the data that is sent in Nakamura is, for example, a request for a

5   reproduction schedule. So, think of -- maybe digital cable. Cable on

6   demand, something like that.

7   So you are actually sending out a request for specific contents, or

8   sending a request for a program listing of specific content. Something

9   similar to that.

10   And the purpose for the language, which is kind of reiterated through

11   the prosecution history in our appeal brief and our reply brief is that the

12   content data that we transmit from the terminal apparatus and which

13   is -- from the client terminal, from the user terminal apparatus to the content

14   distribution server, is actually streaming video.

15   So it's the same -- they are streaming content that's sent from our user

16   terminal apparatus to the distribution server that is sent out to the clients.

17   So, that's how we rely -- those last two features rely on an antecedent basis

18   for the same content data.

19   JUDGE LUCAS: Okay. And you have defined content somewhere in

20   the spec?

21   MR. HARRY: Yes. I think -- though the spec clearly describes

22   the -- amongst other embodiments, that it can be a content stream. But the

23   fact is that it's the same content.

24   So you've got -- one of the embodiments is a user at a PC, you know,

25   with a digital camera attached to the PC. That user reserves a specific time

1   slot in this distribution server and then the user is able to record what they

2   are doing in real time. That is sent to the distribution server.

3   And then different clients are able to access that distribution server in

4   order to see that live stream video.

5   JUDGE LUCAS: Okay.

6   MR. HARRY: And then that's -- I think that is -- the main distinction

7   between our invention and Nakamura is that the client device in Nakamura

8   does not perform that function.

9   JUDGE LUCAS: The rejection was a 103.

10 MR. HARRY: Correct.

11 JUDGE LUCAS: Is there any way that Wiser supplements or provide

12 sufficient teaching?

13 MR. HARRY: I don't believe that it does. This was mentioned in the

14 appeal brief. Wiser is a similar type of system. It is related to the download

15 of content, not to the upload of content. It doesn't have the combination of,

16 you know, reserving and then sending -- reserving the resources and sending

17 the content to the distribution server and then relying on the distribution

18 server to also send that content down.

19 And then I guess the final point is, when the -- the Examiner's answer

20 specifically addresses the step of broadcasting content that was received at

21 the distribution server from the user terminal. It says that, "The Examiner

22 considers data received by priority clients from server" -- and, again, this is

23 page 22 from the Examiner's Answer -- "asserts that the Examiner considers

24 data received by priority clients from server as broadcasting by the content

25 distribution server, said content data received from the user terminal

26 apparatus over said first network."

1   So, again, that goes back to the idea that -- in Nakamura that same

2   content that was transmitted from the client to the server, to the extent that it

3   can be considered content, is not broadcast by the server device of

4   Nakamura.

5   JUDGE MacDONALD: So the function is not performed by the prior

6   art?

7   MR. HARRY: Correct. And I think with respect to the motivation

8   arguments -- I think we are going to stand on what we've got in the appeal

9   brief in that regard.

10   And I think that's all I've got, unless you have any further questions.

11   JUDGE MacDONALD: Questions?

12   JUDGE LUCAS: No. Thank you.

13   MR. HARRY: Thank you.

14   (Whereupon, at 9:20 a.m., the hearing was concluded.)

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